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IN THE

Supreme Court of the United States

October Term, 1978

No. 77-1234

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner,

against

COMPAGNIE NATIONALE AIR FRANCE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN RESPONSE TO BRIEF FOR UNITED STATES AS *AMICUS CURIAE*

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The brief submitted herein for the United States as *amicus curiae* concludes, for essentially the same reasons urged by respondent, that review by this Court of the decision below is not appropriate: The decision does not conflict with the decisions of other courts of appeals; it does not present an important question under the Railway Labor Act; and it involves unique facts with little precedential effect (Am. Cur. Br., pp. 13-14). Although the *amicus* thus agrees with respondent that review should not be

granted, it expresses its view that the decision below was erroneous in not determining whether a clause in the contract between the parties was illegal.

Respondent does not agree with the *amicus curiae* that the decision below was erroneous. While mere error, in any case, is not a ground for review, respondent submits this brief in response to the brief of the *amicus curiae* so that the Court's disposition of the petition will not be influenced by the mistaken assertion that the courts below were confronted by a contract, rather than a representation question.

1. The incorrect analysis of the *amicus* flows from its opening observation that "this case stems from a contract dispute." (Am. Cur. Br., p. 8). In thus spotlighting the allegation of the complaint that the termination of voluntary contractual recognition, pursuant to the contract which granted such limited recognition, was unlawful, the *amicus* flatly contradicts the conclusion of both courts below that the issue in the case "is really one of representation" (Pet., p. 27a) and that "the gravamen of the complaint concerns IAM's continued representation of Air France's cargo agents" (Pet., p. 26a).

The *amicus* seems to say, contrary to what appears in their opinions, that the courts below reached the conclusion that the case involved a representational dispute by exclusionary reasoning, *i.e.*, simply because the basic structure of the complaint revealed neither a "major" nor a "minor" dispute under the Railway Labor Act ("RLA" 45 U.S.C. §§151, *et seq.*), what remained must have been a representational dispute (Am. Cur. Br., p. 10). *Amicus*,

moreover, argues that since "neither petitioner nor anyone else seeks to be certified as the representative of respondent's cargo agents, and there is no dispute among competing groups seeking representative status to be settled by the Mediation Board," the case cannot present a representational dispute (Am. Cur. Br., pp. 10-11). That argument, however, simply ignores the extensive authority which holds that *whenever* there is doubt as to whether a union is or remains the legitimate representative of a carrier's employees, the courts do not have jurisdiction to determine the question of representation, whether or not there has been any request for NMB certification by a union or group of employees. *See International Association of Machinists* v. *Northeast Airlines, Inc.*, 536 F.2d 975 (1st Cir.), *cert. denied*, 429 U.S. 961 (1976), and other cases cited at page 7 of Respondent's Brief in Opposition.

The conclusion of the courts below that the dispute was essentially representational was based on the complaint which asserted that Air France "No longer recognized the IAMAW as the representative of the cargo employees" (¶9), and that Air France is attempting to "eliminate IAMAW as the representative for the cargo agents" (¶11). Fundamentally, the complaint sought to compel Air France to continue to recognize the petitioner as representative of its cargo agents, notwithstanding the termination of the contract which was the only source of the limited recognition extended.*

* The *amicus* overlooks the above-quoted allegations of the complaint which clearly put in issue petitioner's representative status, and erroneously says:

"The complaint simply sought a determination whether a provision in a collective bargaining agreement that empowered the

(footnote continued on next page)

By characterizing the case as a "contract" dispute, the *amicus* exalts form over substance. In *Brotherhood of Ry. & S.S. Clerks* v. *United Air Lines,* 325 F.2d 576 (6th Cir. 1963), *cert. dismissed,* 379 U.S. 26 (1964), by contrast, the court rejected a similar argument by the plaintiff union that the court had jurisdiction to determine if United was bound, following a merger with Capitol Air Lines, by that union's contract with Capitol covering the craft or class of clerical and related employees. The union contended that it did not seek an adjudication of its right to continue to represent the former Capitol employees, but only determination of the carrier's contract obligations. That argument was persuasively rejected:

> "Looking through form to substance, we agree with the District Court that, although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute. Even though an action is brought as one sounding in contract the courts have no jurisdiction 'where "validity" of the contract depends upon the merits of a representation dispute.'" [Citation omitted] 325 F.2d at 579.

carrier to terminate the agreement based on its unilateral judgment without following the procedures prescribed by the Railway Labor Act was lawful." (Am. Cur. Br., p. 9).

Amicus' summary of the complaint, apart from being incomplete, is inaccurate. The agreement did not empower respondent to terminate the agreement based upon its "unilateral judgment," but provided for such termination upon the occurrence of a specified decision by the National Mediation Board. (Petitioner chose not to submit any question of the interpretation of the operative clause to the System Board of Adjustment, so no question can be raised now, or hereafter as *amicus* suggests (Am. Cur. Br., pp. 12-13), about the meaning of the clause. Resp. Br., pp. 3-4, 8; Pet., p. 28a.) Moreover, there are no "procedures prescribed by the Railway Labor Act" for termination of an agreement granting voluntary recognition to a representative of a group of employees not entitled to select a representative under the Railway Labor Act, just as there are no procedures prescribed by that act for granting of such voluntary recognition by a carrier.

2. Having started from the incorrect premise that the case involves simply a claim that a contractual termination clause was illegal under the Railway Labor Act, the *amicus* proceeds to the conclusion that the courts below should have asserted jurisdiction over the complaint and resolved the legal issue of whether the clause is lawful. The simple answer to this contention is that the contract clearly does not violate any provision of the Act; neither Section 2, First nor Section 6 prescribes procedures for continuation of voluntary recognition of a representative. As explained in *Haley* v. *Childers,* 314 F.2d 610, 613 (8th Cir. 1963) (cited by Am. Cur. Br., p. 12, n.4), mere conclusory allegations that a contract violates the Railway Labor Act are wholly insufficient to confer federal jurisdiction.*

While the *amicus* asserts that the complaint raised a "colorable legal issue" concerning the validity of Article XVII(q), and that the argument as to illegality is not "palpably wrong" (Am. Cur. Br., p. 12), the *amicus* significantly does not contend that the clause was illegal. It suggests in a footnote only that the termination clause was "arguably" a violation of the obligation imposed by RLA Section 2, First to "make and maintain agreements" with respect to rates of pay, rules and working conditions, or of the requirement that "pay, rules and working conditions not be changed without the notice required by Section 6 of the Act" (*ibid.*). The existence of those asserted statutory obligations, however, is dependent on petitioner's continued status as the representative of respondent's cargo agents.

*"[A] mere conclusion of law or, as here, a naked conclusory allegation that a bargaining contract violates a federal statute, has no efficacy and is wholly insufficient to confer jurisdiction upon the federal court where such allegation is unwarranted by the asserted facts and is contradictory to well pleaded facts." *Haley* v. *Childers,* 314 F.2d at 613.

But petitioner has no statutory right to represent the cargo agents, a group of employees not comprising a craft or class.* Its claim to such representative status sprang only from the contract, which, in extending recognition, simultaneously limited such representative status to continue only until the occurrence of conditions which did occur. For the courts to assume jurisdiction to determine whether the contract was illegally terminated unavoidably would result in a decision that petitioner either was or was not the representative of the cargo agents—and that question, as the courts below held, is one within the exclusive jurisdiction of the National Mediation Board.

In none of the cases cited by the *amicus* (Am. Cur. Br., pp. 13-14), upholding the assertion of jurisdiction where a specific question is raised as to the legality of a contract provision under the RLA, was the contract question inextricably interwoven with the question of whether the plaintiff was the representative of the employees. On the contrary, in none of those cases was the union involved seeking affirmation that it was the employees' representative.**

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* The statement of *amicus* (Am. Cur. Br., p. 3) that "the statute permits employers and labor unions to enter into collective bargaining agreements covering groups of employees constituting less than a "craft or class" is true only in the sense that the statute does not prohibit such agreements.

** *Felter* v. *Southern Pacific Co.*, 359 U.S. 326 (1959) involved a claim that the contractual restrictions on revocation of a dues checkoff authorization violated Section 2, Eleventh of the RLA. In *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768 (1952) the claim was that the provisions of a contract with a union representing only white employees were racially discriminatory.

Contrary to the statement of the *amicus curiae* (Am. Cur. Br., p. 12, n.4). *Japan Air Lines Co.* v. *International Association of Machin-*

(footnote continued on next page)

Conclusion

For the reasons expressed by the United States as *amicus curiae*, and for the additional reason that the decision below is correct, the petition for a writ of certiorari should be denied.

Dated: New York, New York
August 21, 1978

Respectfully submitted,

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ists, 538 F.2d 46 (2d Cir. 1976), did not resolve a dispute about "the legality of a contract agreement under the Railway Labor Act," but concerned rather the question whether a union proposal that the carrier hire additional employees to perform work which had always been subcontracted was a mandatory subject of bargaining, and whether insistence by the union on such proposal in negotiations violated the requirement of RLA Section 2, First, that the parties exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. There was no claim in that case that any agreement, or the union's proposal, in itself, was illegal under the RLA.